



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/149518

PRELIMINARY RECITALS

Pursuant to a petition filed May 21, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Department of Health Services in regard to Medical Assistance, a hearing was held on June 26, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether a prior authorization request for Medicaid payment for an evaluation for a speech language generating device meets standards necessary for that payment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Theresa Walske, MS, CCC-SLP
DHS –OIG
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.

2. A prior authorization (PA) request seeking Wisconsin Medicaid payment for an evaluation for a speech device was filed with the Medicaid program on March 28, 2013. The cost was noted to be \$183.00. The evaluation was performed using just 2 speech generating devices – a low end device, the Cheap Talk and a fairly high end device – the iPad.
3. The PA noted at Finding # 2 was denied the reason for the denial being that the evaluation did not meet professional standards.
4. Petitioner is 30 years of age (11/16/2009). She lives with her parents.
5. The PA request indicates Petitioner's diagnosis as spina bifida with hydrocephalus and unspecified developmental delays.

DISCUSSION

When determining whether to approve therapy, the Department must consider the generic prior authorization review criteria listed at *Wis. Admin. Code, §DHS 107.02(3)(e)*:

(e) *Departmental review criteria.* In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

(a) Required to prevent, identify or treat a recipient's illness, injury or disability; and

(b) Meets the following standards:

1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
3. Is appropriate with regard to generally accepted standards of medical practice;
4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
6. Is not duplicative with respect to other services being provided to the recipient;
7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, §DHS 101.03(96m).

As with most public assistance benefits the initial burden of demonstrating eligibility for any particular benefit or program at the operational stage falls on the applicant, *Gonwa v. Department of Health and Family Services*, 2003 WI App 152, 265 Wis.2d 913, 668 N.W.2d 122 (Ct.App.2003). In other words, it is a Petitioner's burden to demonstrate that s/he qualified for the requested continued services by a preponderance of the evidence. It is not the Department's burden to prove that s/he is not eligible.

Further, I note that Medicaid is meant to provide the most basic and necessary health care services at a reasonable cost to a large number of persons and must authorize services according to the Wisconsin Administrative Code definition of medical necessity and other review criteria noted above. It is not enough to demonstrate a benefit; rather, all of the tests cited above must be met.

Here the Department submitted an 8 page letter (Ex # 3, dated June 7, 2013) that describes in great detail the rationale for the denial. I am not going to reproduce it here but in brief the Department did not find that the above criteria were met because by evaluating Petitioner on only two devices with very different capabilities the provider has not demonstrated that the evaluation was consistent with Petitioner's symptoms, her diagnosis or the treatment of her disability. Indeed, the Department contends that this is contrary to professional standards. That a speech generating device is quite likely needed by Petitioner is not disputed.

Petitioner's mother represented her at the hearing and was at something of a disadvantage in that she was only following advice in obtaining the evaluation and is now being billed. Per her understanding, a local program – the Milwaukee County Disability Support Program has agreed to purchase the I-pad but only after the Medicaid program pays for the evaluation. Further, she did check with the provider and testified that she was told that these are the only two devices the provider tests on.

Quite frankly, I am unaware of the just mentioned program but the Department can only authorize the expenditure of Medicaid funds where criteria established in the law above are met. This request was clearly correctly denied for all of the reasons stated in the Department's letter of June 7, 2013.

I also note for Petitioner's parents that the State Medicaid law does not allow the provider to bill them for the evaluation unless the provider's personnel told them that if the evaluation were denied they would be liable and they agreed to proceed with the service. Wis. Admin. Code, § DHS 104.01(12)(c) provides:

When a service must be authorized by the department in order to be covered, the recipient may not be held liable by the certified provider unless the prior authorization was denied by the department and the recipient was informed of the recipient's personal liability before provision of the service. In that case the recipient may request a fair hearing. Negligence on the part of the certified provider in the prior authorization process shall not result in recipient liability.

Finally, I note for Petitioner that the provider will not receive a copy of this Decision. If Petitioner wishes the provider to have a copy, Petitioner must provide a copy to the provider.

CONCLUSIONS OF LAW

That the PA request that was the subject of this hearing was correctly denied by the Medicaid program as it does not meet standards necessary for payment by the Wisconsin Medicaid program.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

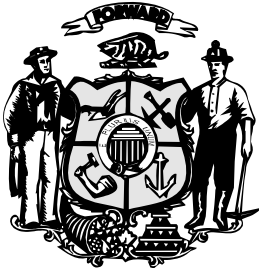
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 15th day of August, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 15, 2013.

Division of Health Care Access And Accountability